

INFORMATION SHEET
 DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS
 RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY
 V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: Philadelphia

FILE NUMBER: CENAP-OP-R-200400810-26

REGULATORY PROJECT MANAGER: Kevin E. Faust Date: June 9, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: In the office N (Y/N) Date: _____
 At the project site Y (Y/N) Date: May 6, 2004

PROJECT LOCATION INFORMATION:

State: Delaware

County: Kent

Center coordinates of site by latitude & longitudinal coordinates: 39-07-89N; 75-28-41W

Approximate size of site/property (including uplands & in acres): 400 acres

Name of waterway or watershed: Saint Jones River

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands									
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type) Ditches/Swales			4.3						

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?				X	
Is or would be used as habitat by other migratory birds that cross state lines?				X	
Is or would be used as habitat for endangered species?				X	
Is used to irrigate crops sold in interstate commerce?		X			

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary _____ Or Approved X .

INFORMATION SHEET – CONTINUED

DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING FROM THE U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORHTERN COOK COUNTY V. U.S. ARMY CORPS OF ENGINEERS

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ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):

1. Dover Air Force Base, 400 acres, located southeast of Dover Delaware, on U.S. 113, East Dover Hundred, Kent County, Delaware. The DAFB consist of approximately 75 acres of jurisdictional waters of the United States and 4.3 acres of isolated waters of the United States and non-jurisdictional drainage swales.
2. All jurisdictional waters of the United States are tributaries of the Saint Jones River or are wetlands located adjacent to or contiguous with the Saint Jones River and/or it's tributaries. The Saint Jones River is a tidal navigable water of the United States that flows into the Delaware Bay that flows into the Atlantic Ocean. The non-jurisdictional areas are either isolated with no surface water connection to waters of the United States or determined to be swales and not part of the tributary system of the Saint Jones River watershed.
3. From 33 CFR 328.3 (a) The following commerce determinations have been made in regard to the non-jurisdictional isolated waters on the Dover Air Force Base: a) They are not tidal; b) They are not interstate waters, but are located entirely within the state of Delaware; c) They are not interstate waters that the use, degradation, or destruction of which could effect interstate or foreign commerce; d) They can not be used by interstate or foreign travelers for recreation or other purposes as the property is private; e) They could not be used for the harvesting or selling of fish or shellfish in interstate or foreign commerce; f) They could not be used for industrial purposes by industries in interstate commerce; g) They are not impoundments of waters describe above; h) They are not a tributary to waters of the U.S.; and i) They are not a part of the territorial seas. As such, theses isolated waters are not subject to Clean Water Act Jurisdiction.

In accordance with the "U.S. Army Corps of Engineers Philadelphia District Technical Support Document Clean Water Act Jurisdiction Over Stream and Ditches" dated July 3, 2003, drainage "swales" on-site were determined to be elongated depressions on the landscape in which the occurrence, volume and velocity of water flow are not sufficient to create erosional features, such as bed and banks. As such, the drainage swales are not part of the tributary system of the Saint Jones River watershed and are not subject to Clean Water Act Jurisdiction.

4. The approximately 75 acres of jurisdictional waters of the United States on Dover Air Force Base are tributaries of the Saint Jones River or are wetlands located adjacent to or contiguous with the Saint Jones River and/or it's tributaries. The Saint Jones River is a tidal navigable water of the United States that flows into the Delaware Bay that flows into the Atlantic Ocean. Therefore, all jurisdictional waters of the United States are regulated pursuant to Section 404 of the Clean Water Act @ 33 CFR 328.3 (a)(5) & (a)(7).